

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NEIL ROBERSON,

Plaintiff,

v.

VERGE, SUPREME COURT OF  
WASHINGTON,

Defendant.

CASE NO. 3:25-cv-05331-RAJ-BAT

**REPORT AND  
RECOMMENDATION**

Plaintiff is serving a prison sentence at the Stafford Creek Corrections Center. On April 18, 2025, he filed a writ of mandamus under 18 U.S.C. 1361 requesting the Court order Skagit County Superior Court Judge Thomas Verge and the Washington Supreme Court to issue orders related to his state conviction in 18-1-00907-29. The Clerk sent Plaintiff a letter indicating his *in forma pauperis* application was deficient and he needed to cure the deficiency by May 21, 2025 or the matter may be dismissed.

Plaintiff's actions fail to state a claim upon which relief may be granted. First, Plaintiff brings this action pursuant to the federal mandamus statute which provides "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty owed to the plaintiff." 28

1 U.S.C. § 1361. Defendant seeks mandamus relief against state, not federal officers; section 1361  
2 accordingly provides no basis for the relief requested.

3 Moreover, the Court has no authority to grant injunctive or mandamus relief by issuing  
4 an order directing state court judges to issue state court orders. *See Pennhurst State School &*  
5 *Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (under the Eleventh Amendment, a federal district  
6 court lacks jurisdiction to order state officials to conform their conduct to state law); *Demos v.*  
7 *United States Dist. Court for the Eastern Dist. of Washington*, 925 F.2d 1160, 1161-62 (9th  
8 Cir.1991), *cert. denied*, 498 U.S. 1123, (1991) (petition for mandamus to compel state court to  
9 take or refrain from taking some action “frivolous as a matter of law”); *Clark v. State of*  
10 *Washington*, 366 F.2d 678, 681 (9th Cir.1966) (“[t]he federal courts are without power to issue  
11 writs of mandamus to direct state courts or their judicial officers in the performance of their  
12 duties”) (citation omitted); *see Pendleton v. Superior Court of Washington for Spokane County*,  
13 2019 WL 13246674 (E.D. WA. March 12, 2019) (“under the Eleventh Amendment, a federal  
14 district court lacks jurisdiction to order state officials to conform their conduct to state law.”);  
15 *Taylor v. Calif. Dep’t of Justice*, 2009 WL 1814421 (N.D. Cal. June 23, 2009) (court had no  
16 authority to order California Department of Justice and local police department to provide  
17 petitioner with all evidence obtained in investigation of case).

18 The Court accordingly concludes Plaintiff’s pleadings fail to state a claim upon which  
19 relief may be granted and accordingly recommends the matter be **DISMISSED** with prejudice.  
20 Leave to amend should be denied because no amendment will cure the fact the Court lacks the  
21 authority to order the state courts to provide the relief that Plaintiff requests. *See Lucas v. Dep’t*  
22 *of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (the Court may deny leave to  
23 amend if “it is absolutely clear that no amendment can cure the defect.”).

**OBJECTIONS AND APPEAL**

This Report and Recommendation is not an appealable order. Plaintiff should thus not file a notice of appeal in the Court of Appeals for the Ninth Circuit until the assigned District Judge enters a judgment in the case.

Objections, however, may be filed no later than **May 21, 2025**. The Clerk should note the matter for **May 23, 2025**, as ready for the District Judge's consideration. The failure to timely object may affect the right to appeal.

DATED this 7<sup>th</sup> day of May, 2025.

  
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BRIAN A. TSUCHIDA  
United States Magistrate Judge